

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Amendment of Part 1 of the )  
Commission's Rules -- )  
Competitive Bidding )

WT Docket No. 97-82

To: The Commission

EXHIBIT B - ORIGINAL

COMMENTS OF PAGING NETWORK, INC.

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## SUMMARY

In these comments, PageNet supports proposals to establish rules which provides necessary information to bidders at auction; discourages speculation; and creates auction designs that will foster the award of the license to the entities most capable of providing a high quality and valuable communications service to the public.

PageNet supports the notion that the auction rules should provide bidders with information regarding the nature of the license to be auctioned and the identities of the competing bidders. PageNet proposes that the Commission establish a rule prohibiting any FCC auction design that includes blind bidding.

PageNet supports the proposal to apply the rules established in this proceeding to all pending and future auctions. With respect to amendment of short form applications, because amendments to add or delete licenses could only lead to abuse, the Commission should consider all amendments to add or delete licenses to be non-permissive major amendments.

The authority to audit entities seeking to take advantage of special provisions should be retained by the Commission to guard against and resolve auction abuses. In addition, those entities seeking special provisions based on financial standing, should be required to submit audited financial statements.

In order to deter speculation and to foster an auction environment where the license is acquired by the applicant that is most capable of providing high quality service to the public,

the Commission should establish a general rule requiring a substantial upfront payment for each license auctioned. In addition, a rule should be established that requires the applicant to pay some percentage of the aggregate of the upfront payments of all of the applications identified on the applicant's short form application.

PageNet opposes minimum opening bids or reservation fees for licenses because it allows the Commission to set the values of the licenses, rather than the bidders in the auction. Maximum bid increments should not be adopted because there is no possibility that jump bidding could adversely affect the value paid at auction for licenses.

The Commission should not establish a rule limiting bid withdrawal because this would severely limit a bidder's flexibility in an auction to correct erroneously made bids and to pursue a different bidding strategy.

With respect to the collusion rules, PageNet supports safe harbor rules for incumbents participating in auctions in order to prevent the auction from disrupting the normal course of business. PageNet opposes allowing passive investors to move from application to application during the auction and therefore hold an ownership interest in more than one bidder that entered the same auction seeking the same licenses.

PageNet supports pre-grant construction because it allows for a more rapid build-out of communications systems and service to the public.

For efficiency and convenience and to reduce the paper burden on the Commission, PageNet supports the proposal to require electronic application filing.

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**COMMENTS OF PAGING NETWORK, INC.**

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. §§ 1.415 and 1.419, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking in the above-captioned docket, released February 28, 1997 ("NPRM"). In support of these Comments, the following is respectfully shown:

**I. Interest of PageNet**

PageNet, through its subsidiaries, is the largest paging company in the United States. PageNet has participated in FCC auctions where it spent approximately one-quarter of a billion dollars for the rights to utilize Commercial Mobile Radio Service ("CMRS") spectrum. PageNet will participate in future FCC auctions and is interested in this proceeding.

**II. Introduction**

The Commission should adopt certain competitive bidding rules that would be applicable to all pending and future auctions. In establishing these rules, the Commission should seek to achieve the following goals:

1. Auction designs should provide bidders as much information about the licenses to be auctioned (e.g., incumbent system information) and the bidders participating in the auction.
2. Auction design and competitive bidding rules should not encourage or provide an attractive environment for speculators or application mill investment schemes.
3. When substantial incumbents exist within the geographic area of the license to be auctioned, the auction design and competitive rules should not provide incentives for other bidders to buy the market area license thereby fostering an environment where the license is awarded to the entity most capable of serving the public.

### **III. The Commission's Auction Rules Should Mandate Disclosure Of Bidder Identities And Ownership**

#### **A. The Commission's Auction Designs Must Never Include Blind Bidding**

In the NPRM, the Commission sought comment on ownership disclosure requirements.<sup>1</sup> Full ownership disclosure should be required by each auction participant because this information aids bidders by providing them with information about their auction competitors and alerts them to entities that are subject to anti-collusion rules. In the recent *Future of Paging Order*,<sup>2</sup> the Commission determined to limit the information provided to the bidders and, in effect, held a blind or nearly blind

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<sup>1</sup> NPRM at ¶ 51.

<sup>2</sup> In the Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18; PP Docket No. 93-253, 62 FR 11616 (1997) ("*Future of Paging Order*").

auction.<sup>3</sup> For the reasons stated below, the Commission should prohibit blind bidding in any pending and future FCC auction.

Blind bidding occurs when auction participants do not know the identities or ownership of the other bidders in the auction. Blind bidding is inappropriate in the context of FCC auctions because blind bidding:

1. Is unfair to auction participants;
2. Encourages auction abuses; and
3. Encourages speculation.

If the Commission should have a deep understanding of one facet of the auctions, it is that, when companies participate in the auctions and spend hundreds of millions of dollars, the future of these companies (and the very future of the U.S. communication market) is at stake. What is needed at auction is more information about the applicants -- not less. Blind bidding is unfair to auction participants because it requires participants to stake the future of their business without adequate information to make considered auction decisions. The Commission cannot expect participants in FCC auctions to spend billions of dollars without knowing who the other bidders are in the auction. Because it is not reasonable or rational to limit information regarding the identities of bidders in FCC auctions, the Commission should adopt rules that prohibit blind bidding.

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<sup>3</sup> *Future of Paging Order*, at ¶ 106.

In addition, the Commission should never adopt an auction structure that includes blind bidding because this type of auction process encourages auction abuses that could have significant impact on the competitiveness of the communications market. For instance, if a significantly built-out incumbent is participating in an auction and that incumbent already satisfies the market area build-out requirements with its existing system, if blind bidding were used, the incumbent's competitors could bid-up the price of the market area licenses which the incumbent must have for future expansion. The result of blind bidding is that a competitor is allowed to anonymously bid-up the price of a license it never intends to buy in order to force the incumbent to buy the license at a higher price. The higher price will be reflected in higher rates for services which could adversely affect the incumbent's ability to compete.<sup>4</sup>

Furthermore, blind bidding should never be utilized in any FCC auction because blind bidding encourages speculation. Often speculators, particularly those that are themselves victims of application mill investment schemes, may not understand that the licenses that are being auctioned may not have any value except

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<sup>4</sup> Blind bidding is extremely unfair to incumbents because other bidders will expect incumbents that have significantly built-out systems in a market area to bid for the relevant market area license. As such, it will be easy to deduce the identities of incumbents by the licenses upon which they bid. The incumbent, on the other hand, may never know who unfairly bid-up the price of a license.

to the existing incumbent. This belief is based in part on the expectation that the FCC would not auction a license that has no real value to the buyer or that the FCC would not sell a license at auction where the buyer could never meet the construction requirements and therefore not be able to retain the license. Many simply do not understand that a market area license where the incumbent already meets the maximum build-out requirements, is not a license that could be used by anyone else except the incumbent to provide an adequate and valuable service to the public, i.e., high quality wide-area service. As such, at a minimum, disclosure of which applicants are bidding on each license being auctioned is necessary and will discourage speculation because it will aid auction participants in understanding whether the license being sold has any real value to them.

Accordingly, for the reasons stated above, the auction process, the applicants, and the public would be better served by prohibiting any auction structure that would limit the ability of the bidders to know who is participating in the auction.

**B. The Commission Should Require Full Ownership Disclosure With Respect to Auction Applicants**

Ownership information is vital to the ability of applicants to fully participate in the auctions. Full disclosure of ownership information also allows the Commission to gather the information necessary to enforce ownership requirements of the Communications Act and to accord special provisions to certain classes of applicants. For these reasons, the Commission should require applicants to disclose entities and individuals that own more than five percent (5%) of the applicant, or have provided more than five percent (5%) of the applicant's equity. Ownership information should be stored in a central database as proposed in the NPRM.<sup>5</sup> PageNet recommends that each time an application is filed with respect to an auction assigned license, the applicant be required to either: (1) submit ownership information for first time inclusion in the database (first short form application after rule is adopted); (2) certify that the information existing in the database is accurate in all material respects (at the time of filing either a short form application or application for permanent authority); or (3) update the information already contained in the database (at the time of filing either a short form application or application for permanent authority). For the sake of convenience and to reduce the burden on the FCC's

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<sup>5</sup> NPRM at ¶ 54.

resources, ownership records should be available through the FCC's internet web site.

**IV. The General Competitive Bidding Rules Adopted In This Proceeding Should Be Applicable To All Currently Announced And Future Auctions**

In the NPRM, the Commission sought comment as to whether the rules adopted in this proceeding should supersede: (1) all existing service specific competitive bidding rules for future auctions; and (2) competitive bidding rules adopted in pending proceedings where the licenses have not yet been auctioned.<sup>6</sup> PageNet supports applying certain rules adopted in this proceeding to all future auctions even if specific service rules have already been adopted.<sup>7</sup> Consistent rules governing ownership disclosure, upfront payments, collusion and other aspects of the auction process will benefit all auction participants. First, the same core auction rules will shorten the rulemaking process required to begin the auction because comment will not be required for such existing rules. Second, application of the same core competitive bidding rules to each new auction will cause less confusion for the applicants and help the Commission develop and apply a consistent body of law regarding the

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<sup>6</sup> NPRM at ¶ 18.

<sup>7</sup> There are some competitive rules such as round structure and duration and stopping rules that should be uniquely established upon the nature of the license to be auctioned.

application of such rules. Third, the same core competitive rules applied to all pending and future auctions will save the Commission's resources because the Commission will not have to reinvent the wheel for each auction.

**V. All Amendments To Short Form Applications To Add Or Delete Licenses Upon Which The Applicant Will Bid Should Be Considered Major Amendments**

In the NPRM, the Commission sought comment as to whether certain amendments to short form applications should be treated as minor or major.<sup>8</sup> With respect to the addition or deletion of licenses upon which the applicant intends to bid, such amendments should always be treated as major amendments. Because the only new information that applicants could possess would be what licenses other applicants intend to bid upon, amendment of the short form application as a matter of right to add and delete licenses can only lead to auction abuses. One such significant abuse would be if an applicant intentionally amended its short form application to add a license thereby creating a mutually exclusive situation where there had previously been none. This reason alone provides an adequate basis not allow applicants to amend their short form applications on a permissive basis to add or delete licenses.

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<sup>8</sup> NPRM at ¶ 48.

**VI. The Commission Should Retain The Authority To Audit Entities Requesting Special Provisions And Such Entities Should Be Required to Submit Audited Financial Statements**

In the NPRM, the Commission requested comment as to whether it should retain the authority to audit applicants to verify information provided regarding eligibility for special provisions.<sup>9</sup> To ensure the integrity the Commission's entire competitive bidding process, the Commission must retain the authority to investigate whether those entities seeking to take advantage of special provisions in fact comply with the criteria for those provisions.

In addition to the authority to audit special provision eligibility with respect to financial reporting, the Commission should require the filing of audited financial statements by entities seeking to take advantage of special provisions based upon financial status. In the past, some entities have complained that this requirement is onerous. However, if these entities actually intend to obtain licenses at auction and provide advanced mobile services to the public, audited financial statements to demonstrate that they in fact comply with the special provisions is not an onerous requirement. In fact, the only entities for which this requirement could possibly be onerous are entities that have entered the auction to speculate

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<sup>9</sup> NPRM at ¶ 55.

and/or are participating in the auction as part of an application mill investment scheme.

**VII. The Commission Should Require Substantial Upfront Payments For Licenses To Be Auctioned And Tie The Upfront Payment To The Number Of Licenses The Applicant Intends To Bid Upon**

The Commission should adopt a rule that requires the establishment of significant minimum upfront payments for licenses to be auctioned. The Commission should adopt such a rule because it will ensure that licensees either have or can acquire the necessary capital to participate successfully in the auction. In addition, substantial upfront payments help deter speculation by making it harder for speculators to commit financial resources to an endeavor they never intend to complete. Finally, if applicants do not have sufficient resources to meet substantial upfront payment requirements, these applicants will obviously not have the financial capability necessary to build-out communications systems.

To ensure that a substantial upfront payment rule has a meaningful effect on the auctions, the Commission must also adopt a standard rule that addresses the relationship between the number of licenses that the applicant has indicated that it would bid upon in its short form application and the amount of the upfront payment submitted by the applicant. In the past, the Commission has allowed an applicant to indicate that it will bid on all of the licenses available at auction, but pay an upfront

payment that would only allow that applicant to bid on one license a round (one upfront payment). PageNet proposes that the Commission adopt a standard rule requiring separate upfront payments for each and every license that the applicant identifies in its short form application. Alternatively, the Commission could require that upfront payments must equal some percentage of the aggregate upfront payment that would be required for each license identified on the short form application. For instance, if an applicant identified 100 licenses on its short form application, the Commission could require that the applicant submit an upfront payment that was at least twenty percent (20%) of the aggregate total upfront payment for each license the applicant has identified. In this example, if each of the 100 licenses identified on the short form application required an upfront payment of \$10,000, the minimum upfront payment would be \$200,000 ( $100 \times \$10,000 = \$1,000,000 \div 5 = \$200,000$ , which is twenty percent (20%) of the aggregate total).

**VIII. The Commission Should Not Adopt  
A Reservation Fee**

In the NPRM, the Commission sought comment as to whether it should adopt a reservation fee for licenses auctioned.<sup>10</sup> This notion is contrary to the Communications Act and the mandate that the Commission provides for nationwide communications

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<sup>10</sup> NPRM at ¶ 86.

infrastructure. Simply put, there is absolutely no basis to reserve the issuance of licenses that will be used to serve the public because the Commission does not perceive that the license has not sold for enough cash at auction. Value for licenses are set by the amount *bona fide* applicants are willing to pay for them, not by the Commission.

In addition, the Communications Act only provides for the auctioning of CMRS licenses if there are competing mutually exclusive applicants for such licenses.<sup>11</sup> The adoption of reservation fees does not appear to be consistent with the fact that the Commission must award non-mutually-exclusive applicants without competitive bidding.<sup>12</sup>

#### **IX. Maximum Bid Increments Should Not Be Adopted**

In the NPFM, the Commission proposed to adopt maximum bid increments to prevent jump bidding.<sup>13</sup> Jump bidding is bidding a high amount compared to the current bid values in an effort to signal to others that the bidder highly values the license. The Commission indicated that it was concerned that jump bidding erodes license auction values. The Commission should not adopt maximum increments because it is highly questionable that jump

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<sup>11</sup> 47 U.S.C. § 309(j)(1).

<sup>12</sup> Id.

<sup>13</sup> NPRM at ¶ 88.

bidding could have any true effect on any auction. Specifically, in auctions in which the spectrum is unencumbered, even if jump bidding were to occur, once the value of the license that a jump bid was placed on fell below the current value of other licenses in the auction, that license becomes attractive to other bidders and will be the subject of new bids. The fact that there was a jump bid on the license in an earlier round would not stop any legitimate applicant from bidding on a license once its value came into line with or fell below other licenses being auctioned. If the license never comes into line, the jump bidder paid too much. Jump bids do not reserve licenses for jump bidders at lower prices because the auctions are simply too competitive. This is true even in auctions where the spectrum is encumbered, assuming that the spectrum has any value to non-incumbents.

#### **X. The Commission Should Not Limit Bid Withdrawals**

In the NPRM, the Commission requested comment as to whether it should limit bid withdrawals because withdrawals may be used as a form of strategic signalling.<sup>14</sup> Because withdrawals are an important aspect of the current auction designs, the Commission should not limit bid withdrawals. Bid withdrawals provide applicants flexibility to withdraw bids that were erroneously made or to quickly pursue a different auction strategy. With hundreds of licenses up for auction in simultaneous rounds,

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<sup>14</sup> NPRM at ¶ 91.

mistakes in bids are made and bidding strategies are quickly changed. Bid withdrawals are necessary for fair and successful participation in an FCC auction where the applicant's future business is at stake. Concerns that bid withdrawals may allow strategic signalling does not compare to the necessity for flexibility that bid withdrawals provide.

## **XI. Collusion Rules**

### **A. Safe Harbors During the Auction**

In the NPRM, the Commission sought comment as to whether safe harbors should be created for incumbent operators participating in auctions.<sup>15</sup> The Commission should create safe harbors for incumbent operators because auctions should not disrupt the normal course of business. In the normal course of business, communications carriers may become involved in discussions regarding mergers, acquisitions, inter-carrier arrangements that are necessary to meet the business goals of these carriers as well as provide high quality service to customers. For these reasons, safe harbors should be created that would allow incumbent carriers to discuss mergers, acquisitions, intercarriers and other business matters during the auction.

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<sup>15</sup> NPRM at ¶ 102.

**B. A Passive Investor Should Not Be Allowed To  
Join Another Application During the Course  
Of An Auction**

In the NPRM, comment was sought as to whether a holder of a non-controlling interest in an application should be permitted to join another application (consortia application or otherwise) if its original application is completely withdrawn from the auction.<sup>16</sup> PageNet strongly opposes the notion that applicants in the auction (passive or otherwise) be permitted to withdraw their applications and join a new applicant. Not only would this encourage speculation, there simply is no compelling reason to allow passive investors to application jump. This is particularly true when active investors have staked the future of their businesses on their participation in the auction and developed an auction strategy based upon the other applicants. PageNet submits that providing flexibility for passive investors erodes the auction structure and encourages collusion that would ultimately result in lower prices paid at auction. In accordance with the previous auctions, once an applicant participates in the auction, whether as an active or passive investor, that applicant should not be allowed to join another application which was bidding on the same license as the previous applicant.

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<sup>16</sup> NPRM at ¶ 101.

## **XII. Pre-Grant Construction Should Be Allowed**

In the NPRM, the Commission sought comment as to whether it should allow pre-grant construction of radio facilities under the licenses won at auction during the processing of the applications for permanent authorization.<sup>17</sup> Because such construction will allow carriers to bring service to the public more rapidly, PageNet supports the ability of auction winners to construct facilities during the pendency of their applications for permanent authorization.<sup>18</sup>

## **XIII. Applications Should Be Filed Electronically**

Past electronic filing of applications have proven to be efficient and provides the ability for interested parties to gather copies of such filings through the internet or other electronic means. For these reasons, PageNet supports the electronic filing of all auction related applications.

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<sup>17</sup> NPRM at ¶ 104.


<sup>18</sup> Such construction would be at the carrier's own risk.

WHEREFORE, for the foregoing reasons, PageNet respectfully requests that the Commission adopt competitive bidding rules with its comments herein.

Respectfully submitted,

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